

May 31, 2005

Bruce Perelman  
Member, Board of Investments  
Of LACERA  
11041 Hesby Street, Suite #108  
North Hollywood, CA 91601

**Re: Your Request for Advice  
Our File No. A-05-083**

Dear Mr. Perleman:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### **QUESTIONS**

1. You are seeking reelection to the Board of Investments for the Los Angeles County Employees' Retirement Association (LACERA). Are you subject to contribution limits under the Act?
2. Are donated funds or services you receive subject to the gift limits?
3. From whom may you seek and accept donations?
4. Is the local county Board of Supervisors authorized to regulate independent payments made to support or oppose a contestant to the Board of Investments?

### **CONCLUSIONS**

1. No. The provisions of the Act which regulate campaign activities do not apply to individuals who are running for election to the LACERA Board.
2. Yes. Payments (including in-kind donations) received by you in connection with seeking a position on the LACERA Board are gifts for purposes of the Act and are subject to reporting, the gift limitation, and the conflict-of-interest provisions of the Act.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

3. The Act does not limit who may make donations to you in connection with seeking a position on the Board of Investments. However, persons who make gifts over the gift limit are subject to the penalties provided in section 89521.
4. The Act does not prohibit a county Board of Supervisors from regulating independent payments by third parties to support or oppose individuals seeking a position on the Board of Investments so long as there is no conflict with the Act.

## FACTS

You are a member of, and seeking reelection to the Board of Investments for LACERA.

According to the LACERA Board website, the Board of Investments “manages the assets of the fund.” Four board members are appointed by the Los Angeles County Board of Supervisors, one is elected by retirees covered by the LACERA Board, one is elected by “safety members,” one is an ex-officio member, and two members, including yourself, are elected from the general membership.

## ANALYSIS

According to the Act, an “elected officer” is any person who holds an *elective office*, has been elected to an *elective office* but has not yet taken office, or who is appointed to fill a vacant *elective office*. (Section 82020.) A “candidate” is an individual who is listed on the ballot for nomination for or election to an *elective office*. (Section 82007.) “Elective office” means any state, regional, county, municipal, district, or judicial office which is filled at an *election*, as well as membership on a county central committee of a qualified political party, and members elected to the Board of Administration of the Public Employees’ Retirement System (PERS).<sup>2</sup> (Section 82023; see *Gillan* Advice Letter, A-00-033 [opining that PERS Board members were subject to the Act after section 82023 was amended in 1998].) An “election” means any primary, general, special, or recall election held in this state. (Section 82022.)

The LACERA Board members: (1) are voted for by a closed membership that is small in number, (2) exercise duties over a narrow range of issues affecting that small pool of voters, and (3) are not explicitly included in any statute or regulation defining “elected officer.” Accordingly, we do not consider board members of LACERA to hold “elective office.” Therefore, while sections 85301 and 85302 do impose contribution limits on a candidate for elective state office, and since you are not a candidate under the Act, these limits would not apply to you.

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<sup>2</sup> The phrase “and members elected to the Board of Administration of the Public Employees’ Retirement System” was added to the end of section 82023 in 1998 by SB 1753. (Stats. 1998, Ch. 923.) Therefore, prior to 1998, PERS Board members were not considered to have held “elective office.”

In addition, because individuals seeking a position on the LACERA Board are not candidates for purposes of the Act, payments received by these individuals are not subject to regulation by the Act in the form of campaign contributions.

However, these payments are gifts under the Act. (Section 82028.) The Act regulates gifts to sitting LACERA Board members in several different ways. First, gifts over certain amounts must be reported on their statements of economic interests. (See sections 87200, 87202-87205 and 87207.) Second, gifts are limited to \$360 per calendar year from a single source. (Section 89503.) Finally, a gift of \$360 or more during the 12 months prior to an LACERA Board decision may disqualify the board member from participating in that decision. (Sections 87100, 87103.)

Section 82028 defines gift as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received ....” Thus, if a payment is made to you in connection with the LACERA Board and you do not provide consideration of equal or greater value in exchange, it is a gift. Nothing prohibits the payments received in connection with your reelection from being used for personal purposes.<sup>3</sup> Therefore, we conclude that the payments are gifts subject to reporting and the \$360 gift limit. Although the Act does not prohibit any person from making a gift to you, persons making payments over the gift limit maybe subject to civil penalties under the provisions of section 89521.

You ask if the Board of Supervisors is authorized to regulate independent payments made to support or oppose a contestant to the Board of Investment. Nothing in the Act prohibits the board from regulating LACERA Board elections so long as there is no conflict with the provisions of the Act. (Section 81013.) You have not provided any facts to further analyze this, but if such payments would be considered gifts to you, the provisions of the Act could be implicated. (See, for example, regulation 18941.) You should contact the Los Angeles County Counsel for further assistance on this subject.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Kevin S. Moen  
Political Reform Consultant II  
Political Reform Division

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<sup>3</sup> The *Koppes* Advice Letter, No. A-94-121, is rescinded in its entirety.